

**HEALTH**

**PUBLIC HEALTH SERVICES BRANCH**

**DIVISION OF CONSUMER, ENVIRONMENTAL AND OCCUPATIONAL**

**HEALTH**

**Public Recreational Bathing**

**Adopted Repeals and New Rules: N.J.A.C. 8:26-2.3, 2.5, 3.1, 3.20, 3.23, 4.2, 4.7, and 4.8**

**Adopted Amendments: N.J.A.C. 8:26-1, 2.1, 2.2, 2.4, 2.6, 3.2, 3.9, 3.12, 3.13, 3.15, 3.17, 3.18, 3.19, 3.21, 3.22, 3.24, 4.1, 4.3, 4.4, 4.5, 4.12, 4.13, 5, 6, 7, and 8**

**Adopted New Rules: N.J.A.C. 8:26-2.7, 3.25, 4.14, 5.15, 6.13, 6.14, 6.15, 6.16, and 8.14 and 8:26 Appendices A through F**

**Adopted Repeals: N.J.A.C. 8:26-3.3 through 3.8, 3.10, 3.11, 3.14, 3.16, 4.6, 4.10, and 4.11 and 8:26 Appendix**

Proposed: August 7, 2017, at 49 N.J.R. 2407(a).

Adopted: December 19, 2017, by Christopher R. Rinn, Acting Commissioner, Department of Health, in Consultation with the Public Health Council.

Filed: December 19, 2017, as R.2018 d.052, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 26:1A-7 and 26:4A-7.

Effective Date: January 16, 2018.

Expiration Date: August 5, 2023.

**Summary** of Public Comment and Agency Responses:

The Department of Health (Department) received timely comments from the following commenters during the 60-day public comment period, which ended on October 6, 2017:

1. Amanda Applegate, Town of Morristown, Morristown, NJ
2. Kristin Baise, Morris County Park Commission, Morristown, NJ
3. Alice Cadotte, Monmouth County Health Department, Freehold, NJ
4. Michele Cammarata, Township of Montclair Recreational and Cultural Affairs, Montclair, NJ
5. Christine Cronin, New Providence Community Pool, New Providence, NJ
6. Jim Cunningham, NJ Recreation and Park Association, Princeton, NJ
7. Jill Daggon, NJ Recreation and Park Association, Princeton, NJ
8. Christine Davy, Sussex County Division of Health, Hamburg, NJ
9. Patrick Dillion, Atlantic County Division of Public Health, Northfield, NJ
10. James Fagan, Inlet Condominium Association, Chadds Ford, PA
11. William Foelsch, Township of Morris, Convent Station, NJ
12. Dina Fornataro-Healey, Somerset County Park Commission, Bridgewater, NJ
13. Jennifer Gander, Bernards Township, Basking Ridge, NJ
14. Kathy Gerndt, Borough of Somerville, NJ Recreation and Park Association, Princeton, NJ
15. Robert Hogan, Millburn Township Recreation Department, Millburn, NJ
16. Harvey Klein, Garden State Labs, Hillside, NJ
17. Jordan Klein, Garden State Labs, Hillside, NJ
18. Rajendra Kothavade, Microbiologist, Horham, PA

19. Clark Lagemann, YMCA, Westfield, NJ
20. Judith Leblein Josephs, NJ Recreation and Park Association, Princeton, NJ
21. Adam Leib, NJ Recreation and Park Association, Springfield, NJ
22. Melissa Mancuso, Recreation Director, Township of Maplewood, Maplewood, NJ
23. Frank Masella, Borough of Mountainside-Recreation Department, Mountainside, NJ
24. Ellen Meyer, Lonza, Charleston, TN
25. Wendy Moyle, NJ Recreation and Park Association, Princeton, NJ
26. Carol Nauta, Borough of Chatham, Chatham, NJ
27. Stephanie Pizzulo, Lafayette Township, Lafayette, NJ
28. Jennifer Rack, Morris County Park Commission, Morristown, NJ
29. Timothy Roetman, NJ Recreation and Park Association, Princeton, NJ
30. Michael Reisner, East Brunswick Parks and Recreation, East Brunswick, NJ
31. Paul David Roman, Shrewsbury, NJ
32. Kate Schmidt, Township of South Orange Village, South Orange, NJ
33. John Swartz, Township of Secaucus, Secaucus, NJ
34. Alex Sperling, NJ Recreation and Park Association, Princeton, NJ
35. Suzanne Trainor, CEO, International Health, Racquet and Sportsclub Association,  
Boston, MA
36. Bob Ward, NJ Recreation and Park Association, Princeton, NJ
37. Pam Griffin, Executive Director, NJ Recreation and Park Association, Princeton, NJ

A summary of the comments and the Department's responses thereto follows.

1. COMMENT: One commenter states that the definitions of “public recreational bathing facility” and “private recreational bathing facility” should be modified to exempt condominium communities of 30 units or less from these rules. (10)

RESPONSE: The Department disagrees with the comment. The definitions of “public recreational bathing facility” (PRB facility) and “private recreational bathing facility” were crafted to comport with N.J.S.A. 55:13A-3(k), which defines multiple unit dwellings that are subject to the jurisdiction of the Department of Community Affairs under the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq. The Hotel and Multiple Dwelling Law establishes that a private residence contains fewer than three dwelling units. Accordingly, the Department is required to define “PRB facility” and “private recreational bathing facility” in a manner that is consistent with the Hotel and Multiple Dwelling Law. Therefore, the Department declines to modify the definitions based upon the comment.

2. COMMENT: One commenter states that both the construction code and local health officials should review plans for PRB facilities to ensure compliance with the Uniform Construction Code (UCC) and this chapter. The commenter states that it is her understanding that the construction code officials will not review plans for filtration system compliance. (8)

RESPONSE: The Department agrees in part with the commenter and disagrees in part with the commenter. The Department agrees that construction code officials and the local health officials should review all plans for PRB facilities, which includes the filtration system. N.J.A.C. 8:26-2.2(a) and (b) together require that construction code officials and local health officials shall review all plans for PRB facilities. The

Department disagrees with the comment that construction code officials will not review plans for filtration system compliance. Local construction code officials issue a permit to start construction after all plans, including the filtration system, are approved.

3. COMMENT: One commenter states that the requirement for the local health authority to either approve or disapprove of plans to construct a PRB facility within 30 days of approval by the local construction code official at N.J.A.C. 8:26-2.3(d) is confusing. (8)

RESPONSE: The Department disagrees with the comment. N.J.A.C. 8:26-2.3(d) states, in relevant part, that “the health authority shall review and approve or disapprove the application in writing within 30 days of the date of approval by the local code officials.” This means that the local health authority has 30 days to either approve or deny the project after the construction code official has approved of the project.

4. COMMENT: One commenter states that the proposed rule at N.J.A.C. 8:26-2.5(a) and (b) should be modified to include trained pool operators (TPOs) as being responsible for completing the Operational Checklist with respect to hot tubs, spas, and sprayparks. (8)

RESPONSE: The Department disagrees with the commenter that a modification to the rules is necessary. TPOs are responsible for completing the Operational Checklist with respect to hot tubs, spas, and sprayparks in the rule as proposed. Hot tubs, spas, and sprayparks are included in the definition of a “swimming pool” at N.J.A.C. 8:26-1.3.

Therefore, no change is necessary from the proposal.

5. COMMENT: One commenter states that local health officers should be able to modify the Operational Checklist found at N.J.A.C. 8:26 Appendix E to “accommodate additional location information and to clarify items.” (8)

RESPONSE: The Department disagrees in part with the commenter and agrees in part with the commenter. The Department disagrees that local health officers should be able to modify the Operational Checklist because the Department intends the form to be standardized Statewide. The Department agrees that additional space should be provided on the form for notes and the Department has left space on the Operational Checklist for that purpose.

6. COMMENT: One commenter states that the proposed rule at N.J.A.C. 8:26-2.5(d)1, which establishes the requirement to inspect each year-round facility before it opens to the public for the first time “implies” that this requirement applies to year-round facilities. (8)

RESPONSE: The Department disagrees with the commenter. The rule at N.J.A.C. 8:26-2.5(d)1 does not “imply” that year-round facilities must be inspected before opening to the public for the first time. The rule requires that year-round facilities must be inspected before opening to the public for the first time.

7. COMMENT: One commenter states that the proposed rule at N.J.A.C. 8:26-2.7(a) should be modified to include sprayparks. (8)

RESPONSE: The Department disagrees with the commenter. N.J.A.C. 8:26-2.7(a) expressly applies to swimming pools. Sprayparks are included in the definition of a

“swimming pool” at N.J.A.C. 8:26-1.3. Therefore, no change is necessary from the proposal.

8. COMMENT: One commenter states that it is important for a swimming pool pump to flow, so as to clean the filter against the total dynamic head (TDH). The Department should not remove this requirement from the rules. (8)

RESPONSE: The Department agrees with the comment. N.J.A.C. 8:26-3.1 incorporates the UCC by reference, as amended and supplemented. The UCC requires pump water flow to clean the filter against the TDH.

9. COMMENT: One commenter states that it is important for a swimming pool to have flow meters. The Department should not remove this requirement from the rules. (8)

RESPONSE: The Department agrees with the comment. N.J.A.C. 8:26-3.1 incorporates the UCC by reference, as amended and supplemented. The UCC requires swimming pools to have flow meters.

10. COMMENT: One commenter states that N.J.A.C. 8:26-3.17(a) and 4.5(a) should not be omitted from the rule because makeup water is added to swimming pools via a garden hose submerged in pool water without backflow protection. (8)

RESPONSE: The Department agrees with the commenter in part and disagrees with the commenter in part. The Department agrees that language concerning the safe addition of makeup water to swimming pools should not be absent from the rule. The Department requires all pool construction, design, and safety features to comply with

the UCC, the references to which are now found at N.J.A.C. 8:26-3.1, 3.17(a), 4.1(a), and 4.5(a). The Department disagrees with the commenter that a garden hose without backflow protection may be submerged in pool water in order to add make-up water. This would not meet the requirements of the UCC. See N.J.A.C. 8:26-3.17(a) and 4.5(a), which address the protection of the potable water supply.

11. COMMENT: Several commenters state that the turnover rates for wading pools and swimming pools established at N.J.A.C. 8:26-3.18(e) and 6.13(k)2, respectively, would place a financial hardship on existing facilities that would require expensive alterations to comply with the new turnover rates. (1, 2, 5, 6, 7, 12, 13, 14, 15, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 32, 33, 34, 36, and 37)

RESPONSE: The Department disagrees with the commenters. N.J.A.C. 8:26-3.24(a) provides that facilities constructed prior to September 7, 2010, are exempt from the location and construction requirements of this chapter. The UCC adopted the higher flow rates on September 7, 2010. Facilities constructed after that date would have met the new requirements. Facilities constructed prior to September 7, 2010, would only have to meet the new requirements if they alter the circulation system. The Department defines "alteration" at N.J.A.C. 8:26-1.3.

12. COMMENT: One commenter states that with respect to N.J.A.C. 8:26-3.20, the commenter does not agree that all aquatic play equipment should be licensed by the Department of Community Affairs (DCA) as water amusement rides. (8)

RESPONSE: The Department disagrees with the commenter. N.J.S.A. 5:3-36 places authority to license and inspect carnival amusement rides, which include water amusement rides, with the DCA. The proposed rule at N.J.A.C. 8:26-3.20 simply references the DCA rule at N.J.A.C. 5:14A-12, which was enacted by the DCA pursuant to its authority.

13. COMMENT: Several commenters expressed support for proposed N.J.A.C. 8:26-20 because it permits new attractions for aquatic play. The commenters state that aqua climbing walls should be expressly permitted by the rule. (1, 2, 5, 6, 7, 12, 13, 14, 15, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 32, 33, 34, 36, and 37)

RESPONSE: The Department thanks the commenters for their support of the rules. The Department disagrees that aquatic climbing walls should be expressly mentioned in order to be permitted. N.J.A.C. 8:26-3.20(a) states that it applies to “all aquatic play equipment.” Accordingly, aquatic climbing walls are permitted by the rule.

14. COMMENT: Several commenters write in support of the rule at N.J.A.C. 8:26-3.21 that would permit floats and platforms as this rule would also permit aquatic play equipment such as the “Wibit” and “Aqua Roller.” (1, 2, 5, 6, 7, 12, 13, 14, 15, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 32, 33, 34, 36, and 37)

RESPONSE: The Department thanks the commenters for their support of the rule.

15. COMMENT: One commenter states that the Department should add the following language to N.J.A.C. 8:26-3.22: “All Chlorine dosing and generating equipment

including erosion feeders or in line electrolytic and brine/batch generators, shall be designed with a capacity to provide the following: 1) Outdoor Aquatic venues (unstabilized): 4.0 lbs. of FAC/day/10,000 gal. of pool water; 2) Indoor Aquatic venues (unstabilized): 2.5 lbs. of FAC/day/10,000 gal. of pool water.” The commenter states that this level of specificity is required in order to ensure that the disinfection levels prescribed by the Department at N.J.A.C. 8:26 Appendix C can be reliably achieved.

(24)

RESPONSE: The Department disagrees with the commenter. Pool disinfection technology is constantly evolving. The Department has established disinfection levels at N.J.A.C. 8:26 Appendix C that are recommended by the Centers for Disease Control and Prevention (CDC). The language recommended by the commenter is current today but may not be tomorrow. There are a number of ways that engineers and design professionals may design disinfection systems to achieve the chemical water quality standards established at N.J.A.C. 8:26 Appendix C. The Department is disinclined to recommend specific designs to achieve recommended chemical water quality standards.

16. COMMENT: One commenter states that the Department should not remove the requirement that drain covers shall be inspected daily from the rule at N.J.A.C. 8:26-3.24(c) and 4.6(g). (8)

RESPONSE: The Department agrees with the commenter that drain covers should be inspected daily. This requirement is now found at N.J.A.C. 8:26-6.13(l) and 6.14(k).

17. COMMENT: Several commenters state that N.J.A.C. 8:26-3.25(b) is confusing and would expand the involvement of the DCA Amusement Bureau, including the possibility of expanding the requirements for licensure. (1, 2, 5, 6, 7, 12, 13, 14, 15, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 32, 33, 34, 36, and 37)

RESPONSE: The Department disagrees with the commenters. N.J.A.C. 8:26-3.25(b) simply refers to a rule of DCA that was promulgated pursuant to its authority to regulate water amusement rides pursuant to N.J.S.A. 5:3-36. The Department does not have the authority to expand the jurisdiction of DCA with respect to requirements for licensure.

18. COMMENT: One commenter states that N.J.A.C. 8:26-4.2 and 6.13 should be changed to prohibit the use of pavers for decks and walkways in the immediate vicinity of the pool. (8)

RESPONSE: The Department disagrees with the commenter. The Department's intent is to incorporate the UCC by reference, allowing use of all construction materials permitted by the UCC. The UCC permits pavers to be used in the area of the pool if the pavers are slip resistant. Accordingly, the Department adopts the rule as proposed.

19. COMMENT: Several commenters state that the rule proposed at N.J.A.C. 8:26-4.4(b) is unclear because it appears to require bonding and grounding certification to be performed annually. The UCC currently requires bonding and grounding certification to be performed every five years. (1, 2, 5, 6, 7, 12, 13, 14, 15, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 32, 33, 34, 36, and 37)

RESPONSE: The Department disagrees with the commenters. N.J.A.C. 8:26-4.4(a) requires bonding and grounding certification to be performed according to the requirements of the UCC at N.J.A.C. 5:23. N.J.A.C. 8:26-4.4(b) requires that the bonding and grounding certification be provided annually to the health authority prior to the opening of the swimming pool or wading pool. The Department intends that together these provisions shall only require the swimming pool or wading pool operator to present a current bonding and grounding certification to the health authority.

20. COMMENT: One commenter states that the Department should not omit N.J.A.C. 8:26-4.6(i) and 4.13(f), which establish the requirement for pump shut off switches on hot tubs and spas. (8)

RESPONSE: The Department agrees that the requirement for pump shut off switches should not be eliminated from the rule. This requirement is now codified at N.J.A.C. 8:26-6.14(i).

21. COMMENT: One commenter states that the word “gas” should not be adopted at proposed N.J.A.C. 8:26-4.8(c)2. (8)

RESPONSE: The Department agrees with the commenter. Proposed N.J.A.C. 8:26-4.8(b) would prohibit gas chlorination; the inclusion of the word “gas” at N.J.A.C. 8:26-4.8(c)2 was inadvertent. Therefore, the Department will not adopt the phrase “gas or” at N.J.A.C. 8:26-4.8(c)2.

22. COMMENT: One commenter notes that N.J.A.C. 8:26-5.1 exempts specially exempt facilities from lifeguard requirements. The commenter states that Subchapter 7 should have a similar provision exempting condominium communities with 16 units from this requirement. (10)

RESPONSE: The Department disagrees with the comment for the same reasons set forth in the Response to Comment 1.

23. COMMENT: One commenter states that the Department should not delete “clarification of invited guest” language at N.J.A.C. 8:26-5.1(a)1 but does not state any reason why. (8)

RESPONSE: The Department disagrees with the commenter. The language at N.J.A.C. 8:26-5.1(a)1 concerning invited guests is duplicative of the language concerning invited guests in the definition of the term “specially exempt facility” at N.J.A.C. 8:26-1.3. Accordingly, the Department proposed deleting the duplicative language from N.J.A.C. 8:26-5.1(a)1 and will make no change upon adoption as requested by the commenter.

24. COMMENT: One commenter states that with respect to proposed N.J.A.C. 8:26-5.12, the Department should expand the requirement for Automated External Defibrillators (AEDs) at bathing beaches and the Department should not eliminate the requirement to have a 600-foot poly rope at ocean lifeguard stations. (31)

RESPONSE: The Department disagrees with the commenter. The rule sets a minimum requirement for AEDs. Bathing beaches are free to exceed the minimum

requirement by providing additional AEDs. Similarly, the poly rope is no longer required but it is not prohibited. Bathing beaches are permitted to provide poly ropes at their discretion. The Department deleted the poly rope requirement because extensive training is required to ensure that the poly rope is used properly and effectively. Therefore, the Department makes no change to the rule upon adoption based upon the comment.

25. COMMENT: Several commenters stated that it is not clear whether N.J.A.C. 8:26-5.2(d)6i prohibits lifeguards from listening to music with headphones or whether the rule prohibits PRB facilities from playing music over loudspeakers. (1, 2, 5, 6, 7, 12, 13, 14, 15, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 32, 33, 34, 36, and 37)

RESPONSE: The Department disagrees with the commenter. The Department intends the rule to apply to the conduct of lifeguards. N.J.A.C. 8:26-5.2(d)6 states, in relevant part, that “Lifeguards who are on duty shall not perform any activities that distract them or intrude upon their attention from proper observation of persons in the swimming pool area ...” N.J.A.C. 8:26-5.2(d)6i is subordinate to this language and does not address whether a facility may pipe in music to loudspeakers in any way.

26. COMMENT: Several commenters stated that the rule at N.J.A.C. 8:26-5.2(d)3 should not place discretion to require additional lifeguards with the local health officer (HO) because HOs are not skilled in areas required for making this determination. The commenters state that the discretion to require additional lifeguards should rest with the facility operator who will make it a part of the standard operating procedure aquatics

facility plan. (1, 2, 5, 6, 7, 12, 13, 14, 15, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 32, 33, 34, 36, and 37)

RESPONSE: The Department disagrees with the commenters. The HO is required to take steps to reasonably ensure public safety, even if this means requiring additional lifeguards. This discretion is guided by N.J.A.C. 8:26-5.2(d)3, which states that the HO shall consider bather load, bather activities, the size and configuration of the swimming pool, the amount of surface area for shallow and deep water areas, emergencies, and the ability of the lifeguard to see bathers. Accordingly, the Department makes no changes to the rule upon adoption.

27. COMMENT: One commenter stated it is not clear whether N.J.A.C. 8:26-5.12(a)1, which requires reach poles, applies to floating rafts at bathing beaches. (8)

RESPONSE: The Department disagrees with the commenter. N.J.A.C. 8:26-5.12(a)1 requires that a reach pole be immediately accessible in the bathing area. The rule does not state where the reach pole must be located.

28. COMMENT: One commenter states that the Department should reconsider allowing rowboats as rescue conveyances at N.J.A.C. 8:26-5.12(a)4. The commenter states that rowboats do not allow the rescuer to keep the victim in sight while rowing, that it is difficult to pull a victim into a rowboat, and that paddleboards are a better alternative. (8)

RESPONSE: The Department disagrees with the commenter. N.J.A.C. 8:26-5.12(a)4 requires a rescue conveyance to be immediately accessible and simply gives examples

of acceptable rescue conveyances. The Department intends the rule to allow bathing beach facilities, in conjunction with HOs, to have discretion to determine the most appropriate rescue conveyance for that facility.

29. COMMENT: One commenter states that N.J.A.C. 8:26-5.13 should retain the requirement for a one foot airspace below docks and that the rule should address the submerged kick plates used by swim teams at fixed platforms or floating docks at bathing beaches. (8)

RESPONSE: The Department agrees with the commenter. The intent of N.J.A.C. 8:26-5.13 is to prevent entrapment. That is why the Department is retaining the requirement of a one foot airspace below docks at N.J.A.C. 8:26-5.13(b). In addition, the Department recognizes that other designs that prevent entanglement or trapping of bathers are acceptable. Although kick plates are not specifically mentioned, the Department intends to not preclude kick plates or other appurtenances, so long as they are designed to prevent entanglement or trapping of bathers.

30. COMMENT: One commenter states that the requirement to have spinal injury management training at N.J.A.C. 8:26-5.2(b) is unclear because approved organizations that provide this new training are not listed in N.J.A.C. 8:26 Appendix A. (3)

RESPONSE: The Department agrees with the commenter. The organizations listed at N.J.A.C. 8:26 Appendix A offer training in spinal injury management as part of the First Aid training required by N.J.A.C. 8:26-5.2(b). The Department does not intend to require additional spinal injury management training. Therefore, the Department will not

adopt the sentence “This person shall also have training in spinal injury management” at N.J.A.C. 8:26-5.2(b) because such training is included in the First Aid training curricula.

31. COMMENT: One commenter states that with respect to N.J.A.C. 8:26-5.3(a)8, which requires owners and operators of pools with lifeguards to have Automated External Defibrillators (AEDs) readily accessible, the Department should establish a list of approved AED certification training courses at N.J.A.C. 8:26 Appendix A. (3)

RESPONSE: The Department disagrees with the commenter. The organizations listed at N.J.A.C. 8:26 Appendix A offer training in First Aid/CPR, which includes AED training and certification as part of their First Aid/CPR training curricula. It is not necessary to add additional language regarding AED training to N.J.A.C. 8:26-5.3(a)8 as suggested by the commenter.

32. COMMENT: One commenter states, with respect to proposed N.J.A.C. 8:26-5.3(a)6, that the rule should include the language that states the emergency phone must be provided by the facility as was clarified by the Department in the past to this office, and additionally should include cell phone policy elements addressing such items as battery life and proper operating and functioning of mobile devices and that the phone should remain charged and be tested, for example. (8)

RESPONSE: The Department agrees in part with the commenter and disagrees in part with the commenter. The Department agrees that emergency phones must be provided by the facility as required in N.J.A.C. 8:26-5.3(a)6. However, the Department disagrees that it should prescribe detailed cell phone policies in the rule. The Department does

not want to prescribe policies and procedures that may hinder local health authorities' authority to determine what may or may not be acceptable mobile device(s) usage at a PRB facility. The Department will continue to provide guidance when and as necessary regarding cell phone policies.

33. COMMENT: Several commenters state that with respect to N.J.A.C. 8:26-5.4, the Department should not allow disposable swimming diapers to be worn by small children. The commenters state that disposable swimming diapers are not allowed in other states. The commenters contend that re-usable swimming diapers with elastic legs are the most effective tool against E-coli outbreaks. (1, 2, 5, 6, 7, 12, 13, 14, 15, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 32, 33, 34, 36, and 37)

RESPONSE: The Department disagrees with the commenter. Swimming diapers of all kinds are designed to limit the leakage of feces, but none are leakproof. As noted by the CDC on its website, <https://www.cdc.gov/healthywater/swimming/swimmers/swim-diapers-swim-pants.html>, no manufacturers claim that their swimming diapers are leakproof, and no designs exist that will prevent the leakage of diarrhea. The CDC emphasizes that any person with diarrhea should not swim, and encourages parents and caregivers to give children frequent bathroom breaks and to change swimming diapers frequently away from the pool. The Department notes that other states, such as Pennsylvania, Virginia, and Texas, allow young children to wear disposable swimming diapers. The commenters cite no scientific evidence or studies in support of their contention that re-usable swimming diapers are superior to disposable swimming diapers. The rule as proposed allows parents and caregivers greater freedom of choice

in choosing how to dress young children for aquatic recreation. The Department further notes that diapers designed for water contact activities are most commonly called “swimming” diapers and, therefore, changes the term “swimmie,” which was proposed at N.J.A.C. 8:26-5.4(a)4 to “swimming” upon adoption.

34. COMMENT: One commenter states that with respect to proposed N.J.A.C. 8:26-6.1(a), the Department should not omit language stating that the “health authority may require a recreational bathing facility to correct or eliminate any specific condition not described in these rules which it deems necessary for proper sanitation or safety.” The commenter states that it has been an important enforcement tool their local health office has used effectively. (8)

RESPONSE: The Department disagrees with commenter. N.J.A.C. 8:26-6.1(a) requires all PRB facilities to be maintained in a “clean, sanitary, and safe condition.” The language that the Department proposed to remove is extraneous. Health authorities retain broad discretion to determine when a PRB facility is not being maintained in a clean, sanitary, and safe condition and to take appropriate action to cause remedial measures.

35. COMMENT: One commenter requests that, with respect to proposed N.J.A.C. 8:26-6.13(m)4ii, the Department should provide a specific guidance document or sample form in the appendix to assist the operator in achieving the optimum oxidation-reduction potential. (3)

RESPONSE: The Department disagrees with the commenter. Optimum oxidation-reduction potential is different for every pool because it depends upon factors including, but not limited to, pool size, pool shape, chemicals added to the water, and source water chemistry. For this reason, the Department cannot prescribe a specific guidance document or sample form that would satisfy the requirement to develop a chart at N.J.A.C. 8:26-6.13(m)4ii. The requirements for optimum oxidation-reduction potential will be determined by the TPO for each individual pool by following N.J.A.C. 8:26-6.13.

36. COMMENT: One commenter states with respect to proposed N.J.A.C. 8:26-6.13, the Department should include language to prohibit dark grey, black, or other dark colors for swimming pool interiors and to establish, by regulation, a criteria for testing pool water clarity and visibility within a pool. The commenter also requests that, with respect to N.J.A.C. 8:26-6.13 and 6.14, the Department should require use of a secchi disc for visibility/clarity testing. The commenter states that the Department has established no parameter set for testing visibility/clarity in a pool or hot tub, which poses an obstacle for enforcement. (8)

RESPONSE: The Department disagrees with the commenter. Specific shade or color restrictions are subject to inconsistent interpretation and may be inconsistently enforced Statewide. The language at existing N.J.A.C. 8:26-6.13(b) and 6.14(b) specifically states that the color, pattern, or finish of the pool or hot tub interior shall not obscure the presence of objects or surfaces within the pool. The Department has determined that this standard is easier to follow, and most importantly will allow lifeguards to see victims who may be at the bottom of the pool. The Department notes that the rule does not

prohibit the use of a visual aid, such as a secchi disc, to determine water quality.

Therefore, the Department makes no changes to the rule upon adoption.

37. COMMENT: One commenter states, with respect to proposed N.J.A.C. 8:26-6.5, that wastewater must include backwash from filters and that all backwash discharge must meet with New Jersey Department of Environmental Protection (NJDEP) regulations. The commenter suggests that the Department should change the rule by adding the word “backwash” at N.J.A.C. 8:26-6.5(e)2. (8)

RESPONSE: The Department agrees in part with the commenter and disagrees in part with the commenter. The Department agrees with the commenter that backwash discharge must meet with NJDEP’s rules for the New Jersey Pollutant Discharge Elimination System (NJPDES), which are found at N.J.A.C. 7:14A. NJPDES definition of “chlorine produced oxidants,” found at N.J.A.C. 7:14A-1.2, includes backwash from filters. Accordingly, the Department makes no change to the rule based upon the comment.

38. COMMENT: One commenter states that the Department should delete N.J.A.C. 8:26-7.8 and 7.12(e), which establish standards for cyanuric acid (CYA) levels, and replace them with the CDC Model Aquatic Health Code (MAHC) standard, which prohibits CYA in spas and therapy pools. The commenter states that the Department should adopt the MAHC standard for chlorine residuals in N.J.A.C. 8:26 Appendix C. The commenter cites to a number of studies in support of these comments. (24) Three commenters are concerned that CYA slows the disinfection rate of chlorine, which is a

concern in killing cryptosporidium, a parasite that spreads through diarrhea (16, 17, and 24). Two commenters suggest that the rules should limit CYA to 20 parts per million in outdoor pools. (16 and 17)

RESPONSE: The Department agrees with the commenters, however, the comments are outside the scope of this rulemaking because the Department did not propose changes to the CYA levels in the existing rules. The Department notes that the CDC has recently established guidelines for ensuring proper pool disinfection following a diarrheal event when the pool water contains CYA, available on the internet at <https://www.cdc.gov/healthywater/swimming/aquatics-professionals/fecalresponse.html>.

Following the CDC guidelines will help ensure pool water safety. The Department can not change the existing CYA levels as part of this rulemaking because to do so would be a substantive change to the rule requiring an additional formal rule proposal under the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. The Department will continue to recommend that local health departments follow CDC guidelines. Further, the Department will work with other agencies and stakeholders to examine how to implement lower CYA levels into this chapter in a future rulemaking.

39. COMMENT: One commenter states that the water sample collection and handling requirements at N.J.A.C. 8:26-7.3 through 7.7 are burdensome and cost prohibitive to small community homeowners, particularly the requirements to test pool water every two hours and to send weekly lab samples out for testing. (10)

RESPONSE: The Department disagrees with the commenter that the rule is burdensome and cost prohibitive for small community home owners. The rules

establish minimum standards that are designed to help ensure the public health and safety of bathers. The Department notes that N.J.A.C. 8:26-6.13(m)4, which establishes the use of chemical controller systems, can be used to reduce the incidence of testing if elected by the pool owner or operator. Accordingly, the Department adopts the rules as proposed.

40. COMMENT: One commenter states that the Department should add the phrase, “provided sample holding times can be maintained” or similar language to N.J.A.C. 8:26-7.3(a) because sometimes it is not possible for laboratory personnel to obtain water samples during a time of maximum use for certain types of facilities, such as those only open late in the day. (3)

RESPONSE: The Department disagrees with the commenter that the Department should add the phrase, “provided sample holding times can be maintained” or similar language to N.J.A.C. 8:26-7.3(a). The Department intends the rule to require PRB facility owners and operators to collect samples at different times to obtain, over time, a representative sampling of the sanitary quality of the facility being sampled. If a PRB facility owner/operator determines that it cannot meet the requirements of N.J.A.C. 8:26-7.3(a), then the owner/operator may apply to the Department for a waiver under N.J.A.C. 8:26-1.4.

41. COMMENT: Two commenters state that the proposed amendments at N.J.A.C. 8:26-7.4(a) and 7.4(b), which would require water samples to be taken to a certified laboratory within eight hours of sample collection, would impose a logistically difficult

time frame. The commenters state that the rule would require setting up for working same day night shifts, so that samples taken could be analyzed the same day, within an eight-hour time period. The commenters state that this will significantly raise the costs to clients and states that the current 30-hour holding time has been and remains satisfactory for real world sampling and analytical procedures. (16 and 17)

RESPONSE: The Department disagrees with the commenters. The rule does not require setting up for working same day night shifts. The rule reflects the standards that laboratories are required to meet under N.J.A.C. 7:18 by the NJDEP for certification to perform PRB sample testing. The eight-hour hold time is necessary because fecal coliforms have a faster die off rate and E. coli is in that family of microorganisms. The Department notes that freshwater beaches across the country have used six- to eight-hour hold times for years for this reason. New Jersey is not unique in adopting this standard. The Department notes that Pennsylvania uses an eight-hour hold time for PRB sample testing. Accordingly, the Department adopts the rule as proposed.

42. COMMENT: Two commenters state that they support using the NJDEP DSAM methods as opposed to specific (old) Standard Methods in the proposed amendments at N.J.A.C. 8:26-7. (16 and 17)

RESPONSE: The Department thanks the commenters for their support of the rule.

43. COMMENT: Two commenters state that the requirement for a 24-hour resample at N.J.A.C. 8:26-7.6(b) may pose a challenge for some pools because they might not be able to treat the pool that rapidly. The commenters state that many of their clients

request a 48-hour resample. The commenters state that if 48 hours is too long, an alternative might be to resample within 24 hours or to close the PRB facility until it is ready for a resample. (16 and 17)

RESPONSE: The Department disagrees with the commenter that some owners or operators might not be able to treat the pool in 24 hours. The rule does not require laboratories to complete resampling in that time period, only that an additional sample be taken in 24 hours. If a PRB facility owner or operator determines that additional time is necessary to treat the bathing water, the owner or operator may close the facility in order to do so. Under the existing rule, there was no time frame. Some owners and operators were waiting for several days to resample the bathing water and this resulted in unsanitary conditions. The Department intends the amendments to N.J.A.C. 8:26-7.6(b) to require resampling in 24 hours to ensure that unsanitary conditions are corrected as soon as possible.

44. COMMENT: One commenter states that it may not be realistic to expect a laboratory to sample pool water and to return the results in 24 hours as contemplated by the proposed amendments at N.J.A.C. 8:26-8.6. The commenter states that the pool water should be immediately resampled after notification of failure to meet water quality standards. (30)

RESPONSE: The Department disagrees with the commenter. N.J.A.C. 8:26-8.6 only requires the taking of samples in 24 hours, it does not require the laboratories to return the results in 24 hours. The Department proposed language new language at N.J.A.C. 8:26-8.6(a) that does not require immediate resampling, but rather requires remediation

and resampling in 24 hours in recognition that remediation should occur prior to resampling.

45. COMMENT: Two commenters state that the one-hour notification of unsatisfactory sampling results requirement of N.J.A.C. 8:26-8.7(a) may not be possible if results come after normal business hours and/or on weekends. (16 and 17)

RESPONSE: The Department disagrees with the commenters. The Department proposed amendments to N.J.A.C. 8:26-8.7(a) that allow for results to be transmitted in a manner approved by the health authority. This may include e-mail, text, fax, or some other method. The Department encourages laboratories to consult with local health authorities to reach an agreement concerning these notifications.

46. COMMENT: Several commenters state that N.J.A.C. 8:26 Appendix A should include Ellis & Associates as a recognized lifeguard certification provider. (1, 2, 5, 6, 7, 12, 13, 14, 15, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 32, 33, 34, 36, and 37)

RESPONSE: The Department agrees with the commenters. The Department has included Ellis & Associates at N.J.A.C. 8:26 Appendix A by using their registered trade name, which is the "International Lifeguard Training Program."

47. COMMENT: One commenter requested modifications to definitions found in N.J.A.C. 8:26 Appendix B, concerning first aid supplies, for the following: change the word "sponge" to "pads," specify roller bandages type and change quantity from 15 to 12 since most bandages are sold by the dozen, bandage scissors should have a

minimum size requirement, tweezers should specify either thumb dressing or splinter-type specifications, blankets should specify mylar type as opposed to wool or composite type cloth and specify number 1-2-4, disposable face shields should be same quantity or more as the quantity of gowns, disposable gloves should be nitrile and a number should be specified vs. requiring a box, a smaller disposable barrier type device in foil pack could be used instead of a pocket resuscitation mask which costs more and takes up more space, hand sanitizer bottle size should be specified, and first aid policies and procedures should be required in book form. The commenter also suggests that safety pins should be added to the kit. (31)

RESPONSE: The Department disagrees with the commenter that it should modify N.J.A.C. 8:26 Appendix B - First Aid Supplies at PRB Facilities. N.J.A.C. 8:26 Appendix B is designed to require PRB facilities to maintain basic first aid supplies and to increase the quantities of those first aid supplies for larger PRB facilities. The Department does not agree that the level of detail suggested by the commenter for bandages, scissors, tweezers, blankets, face shields, gowns, gloves, masks, hand sanitizer, first aid policies and procedures, and safety pins is necessary in order to establish minimum first aid kit standards. PRB facilities are free to exceed the minimum standards set by the Department. Accordingly, the Department makes no changes to N.J.A.C. 8:26 Appendix B upon adoption.

48. COMMENT: Two commenters support the Minimum Chlorine Residual levels found in N.J.A.C. 8:26 Appendix C. (16 and 17)

RESPONSE: The Department thanks the commenters for their support of the rule.

49. COMMENT: Several commenters state that N.J.A.C. 8:26 Appendix E, which contains a Public Recreational Bathing Facilities checklist for preoperational and operational purposes, is not comprehensive enough to reflect each type of operating facility in New Jersey. The commenters state that it is “a good tool for most PRB facilities as long as items that don't apply to that specific aquatic facility are NOT required.”

(1, 2, 5, 6, 7, 12, 13, 14, 15, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 32, 33, 34, 36, and 37)

RESPONSE: The Department acknowledges different types of PRB facilities. The checklist is designed to cover all types of facilities. It is up to the owner or operator to determine whether certain items on the checklist do not apply to his or her facility. The Department included in the rule proposal a not applicable or "N/A" section to accommodate the concerns raised by the commenters. In addition, there is a Comment Section, which has been designed into the form that can be used to explain PRB facility characteristics that the TPO deems noteworthy.

50. COMMENT: One commenter states that the proposed definition of “health club” should not refer to another regulation that defines “Health Club.” The commenter recommends the definition be provided in full to provide inspectors/regulators the full definition without having to read through another regulation. (3)

RESPONSE: The Department disagrees with the commenter. The New Jersey Legislature has defined “health club” by statute at N.J.S.A. 56:8-39. The Department

has referred to the statutory definition and not repeated it verbatim because to do so is precise, less wordy, and is the preferred method of citing to the definition by the New Jersey Office of Administrative Law, the agency which governs rulemaking.

51. COMMENT: Two commenters state that, with regard to N.J.A.C. 8:26-7.17(a)2 and 3, stoppers are not normally used for natural bathing area sampling containers and that sterile screw-top bottles should be opened prior to submersion in water. (16 and 17)

RESPONSE: The comment is outside the scope of this rulemaking because the comment does not refer to changes from the existing rule with regard to stoppers and screw-top bottles.

#### **Federal Standards Statement**

The adopted amendments, repeals, and new rules require the State's public recreational bathing facilities to meet national sanitary and safety standards. The adopted amendments, repeals, and new rules comply with, but do not exceed the BEACH Act and the implementation regulations at 40 CFR Part 131. This Federal regulation sets forth the discretion of the states to establish water quality standards as authorized by Section 303(c) of the Federal Clean Water Act, 33 U.S.C. § 1319. The BEACH Act and the implementation regulations generally require, as a condition of continued Federal grant funding, coastal and Great Lakes states and territories to test for the presence of enterococci bacteria to determine the water quality of their coastal recreation waters. The rules incorporate 40 CFR 136.3 – Tables 1A and 1H, and 40 CFR 141.74(a). These standards are approved laboratory methods for non-potable ambient water testing and cover micro-organism testing for E.coli. DSAM procedures,

which are established by the NJDEP pursuant to N.J.A.C. 7:18, are used for certifying laboratories to perform water quality testing. They are consistent with and do not exceed Federal standards.

The Baker Act requires that by December 19, 2008, the following be installed in public pools and spas: (1) drain covers compliant with UCC, and (2) when there is only a single main drain, a second anti-entrapment system. The adopted amendments, repeals, and new rules meet but do not exceed most current requirements of the Consumer Products Safety Commission (CPSC). The CPSC currently requires the use of ANSI/APSP-7, which is incorporated by reference in the UCC. This is the most current version of ASME/ANSI standard A112.19.8-2007, and the UCC has already adopted ANSI/APSP-7, which contains construction and maintenance requirements for swimming pools and hot tubs and spas, respectively. 16 CFR Part 1207 contains standards for the design and construction of water slides.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

#### 8:26-4.8 Disinfection

(a) - (b) (No change from proposal)

(c) Chemical feeders, also called chemical controller systems, shall only be permitted if their installation (and use as specified in N.J.A.C. 8:26-6.14(l)) conforms to the following:

1. (No change from proposal)

2. Where the chemical feeder is equipped with its own pump, the pump shall be installed so that it introduces the \*[gas or]\* solution downstream from the heater and at a position lower than the heater outlet fitting.

3. – 4. (No change from proposal)

(d) – (e) (No change from proposal)

#### 8:26-5.2 Swimming pool supervision

(a) Designated adult supervisor. A swimming pool shall be under the management of a designated adult supervisor who is knowledgeable of this chapter and who shall be responsible for all phases of the operation.

1. (No change from proposal.)

2. For pools larger than 2,000 square feet, the designated adult supervisor shall possess pool director training certification. Current adult pool supervisors shall have until \*[(one year from the effective date of this amendment)]\* **\*January 16, 2019,\*** to obtain certification.

(b) At least one person currently certified in standard first aid and professional level infant, child, and adult cardiopulmonary resuscitation (CPR) by a Department of Health approved organization listed in N.J.A.C. 8:26 Appendix A, shall be on the premises, available, and readily accessible when the swimming pool is in use. \*[The person shall also have training in spinal injury management.]\*

1. – 2. (No change from proposal)

(c) – (f) (No change from proposal)

8:26-5.4 Bather rules for swimming pools, wading pools, hot tubs and spas

(a) The owner or operator shall conspicuously post rules governing admission, bathing, hours of operation, and conduct of patrons. The posting shall include the following language:

1. - 3. (No change from proposal)

4. All children in diapers must wear diapers specially designed for immersion in water (such as \*[swimmie]\* **\*swimming\*** diapers). Do not wash out soiled diapers in the bathing water.

5. – 11. (No change from proposal)

(b) (No change from proposal)